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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,643	12/01/2000	Steven M. Ruben	PZ040P1	2092
22195	7590	01/16/2004	EXAMINER	
HUMAN GENOME SCIENCES INC 9410 KEY WEST AVENUE ROCKVILLE, MD 20850			SPIEGLER, ALEXANDER H	
			ART UNIT	PAPER NUMBER
			1637	

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/726,643

Applicant(s)

RUBEN ET AL.

Examiner

Alexander H. Spiegler

Art Unit

1637

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 24-75.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


CARLA J. MYERS
PRIMARY EXAMINER

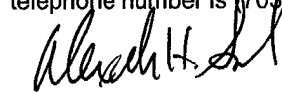
Continuation of 5. does NOT place the application in condition for allowance because of the reasons of record and for the reasons reiterated herein. First, Applicants argue that the Examiner does not represent facts or reasoning to establish that a person of ordinary skill would not believe the statements made by Dr. Komsatsoulis. Furthermore, Applicants argue the Examiner believes Dr. Komsatsoulis' reporting of the scientific findings to be biased or faulty or opinion evidence. Finally, Applicants continue to traverse the 101 rejection.

Applicants arguments have been considered, but are not persuasive for the following reasons. First, it is noted that in the previous action there is no statement which reflects the Examiner's belief that Dr. Komsatsoulis's reporting of the scientific findings to be biased or faulty or opinion evidence. What was questioned in the previous office action and again herein is whether Dr. Komsatsoulis's statement of "I have personal knowledge" is sufficient to substantiate objective evidence that the polynucleotide encoding the claimed polypeptide is only expressed in B cell lymphoma and not in normal cells. The 101 rejection is based, in part, on Applicants' statement, in the specification, that Gene 11, which encodes SEQ ID NO: 56, is expressed "primarily" in B-cell lymphoma (see page 36). The specification does not teach the expression patterns of any other cells, albeit cancer or normal cells. Therefore, absent any other information regarding the expression pattern of polynucleotide encoding SEQ ID NO: 56, the 101 rejection was made and maintained. In response Applicants have submitted Dr. Komsatsoulis's declaration which does not objectively confirm that expression of SEQ ID NO: 56 occurs only in B-cell lymphoma and not in normal cells. Dr. Komsatsoulis's statement, "I have personal knowledge" does not objectively substantiate that expression occurs only in B cell lymphoma and not in normal cells. That is, Dr. Komsatsoulis's statement reflects subjective evidence, rather than objective evidence, such as results or data, demonstrating the conclusion that expression only occurs in B cell lymphoma, and not in normal cells. Dr. Komsatsoulis's statements regarding the polynucleotide properly being translated into a polypeptide is not questioned. Accordingly, as previously stated, the 101 rejection will be withdrawn by a showing of objective evidence demonstrating expression in B cell lymphoma, and not in normal cells.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander H. Spiegler whose telephone number is (703) 305-0806 or (571) 272-0788 after January 22, 2004. The examiner can normally be reached on Monday through Friday, 7:00 AM to 3:30 PM.

If attempts to reach the examiner are unsuccessful, the primary examiner in charge of the prosecution of this case, Carla Myers, can be reached at (571) 272-0747. If attempts to reach Carla Myers are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (703) 308-1119 or at (571) 272-0782 after January 22, 2004. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306. Applicant is also invited to contact the TC 1600 Customer Service Hotline at (703) 308-0198.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Alexander H. Spiegler
January 13, 2004